

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
October 20, 2009 Session

STATE OF TENNESSEE v. THELMA E. OSBORNE

Appeal from the Circuit Court for Cheatham County
Nos. 14930, 14931, 14956 A&B George C. Sexton, Judge

No. M2007-02213-CCA-R3-CD - Filed February 11, 2010

The Defendant, Thelma E. Osborne, was charged with one count of each of the following: (1) assault; (2) simple possession of a Schedule IV controlled substance (Valium); (3) simple possession of a Schedule II controlled substance (methadone); (4) simple possession of less than one half ounce of marijuana, a Schedule VI controlled substance; and (5) possession of drug paraphernalia. Each of these crimes is a Class A misdemeanor. See Tenn. Code Ann. §§ 39-13-101(b)(1), -17-418(e), -17-425(a)(2). At the close of the State's proof, the trial court granted the Defendant's motion for acquittal as to the assault charge. The jury convicted the Defendant of the remaining counts. In this direct appeal, she contends that the State presented evidence insufficient to convict her of simple possession of Valium or marijuana. After our review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JERRY L. SMITH and THOMAS T. WOODALL, JJ., joined.

Phillip A. Davidson, Nashville, Tennessee, for the appellant, Thelma E. Osborne.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany Faughn, Assistant District Attorney; Dan Alsobrooks, District Attorney General; and Robert S. Wilson, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

The events underlying this case occurred on September 14, 2005. Corporal Gary Ola of the Cheatham County Sheriff's Department testified that, on that afternoon, he received a dispatch directing him to meet Mandy Higgs at her trailer. As a result of his conversation with Ms. Higgs,

he proceeded to the Defendant's trailer, intending to speak with her. After knocking on her trailer door, Deputy Ola heard footsteps, as if someone was running around inside the mobile home.

After a few moments, the Defendant opened the door. Corporal Ola smelled the odor of burnt marijuana. He told the Defendant why he was there and noticed two other people present: Charlie White and Ronald Greer. He asked all three of them to step out of the trailer. They did so.

Corporal Ola radioed for backup. He then questioned the Defendant about his conversation with Ms. Higgs, in which Ms. Higgs had alleged that the Defendant assaulted her. Corporal Ola also questioned the Defendant, Mr. White, and Mr. Greer about the marijuana smell. In response, the Defendant led Corporal Ola into her bedroom and showed him a box located on top of her dresser. Inside the box were numerous pills, all of which the Defendant said she had been prescribed. The Defendant did not show Corporal Ola any prescriptions, however. There was also a bag containing a small amount of what Corporal Ola believed to be marijuana. Corporal Ola also found what appeared to him to be a crack pipe, a hemostat and a pair of tweezers, commonly used to grip the end of marijuana cigarettes, a pack of rolling papers, and a set of scales. All three of the trailer's occupants denied ownership of the marijuana and drug paraphernalia. Corporal Ola sent the evidence he had found to the Tennessee Bureau of Investigation ("TBI") for analysis.

Shortly thereafter, Ms. Higgs and her grandmother drove up to the Defendant's trailer and exited their vehicle. Ms. Higgs and the Defendant began yelling at each other. The Defendant said Ms. Higgs had kicked her door earlier that day; Ms. Higgs said she had not. The Defendant denied assaulting Ms. Higgs.

Deputy Paul Miranda testified that he arrived about forty to sixty minutes after receiving Corporal Ola's request for backup. He did not smell marijuana when he entered the trailer.

Charlie White testified that Mr. Greer picked him up and drove him to the Defendant's trailer on September 14, 2005. The Defendant was present there and was in a lot of pain; she either "had to go to the hospital or get her prescription medication." Mr. White noted that the Defendant showed him an empty prescription bottle. The Defendant gave Mr. Greer money to buy methadone; Mr. White and Mr. Greer then drove and bought some from "a guy in Nashville," "an old friend [of Mr. White] who's not a friend anymore." They did not get the methadone from a pharmacy. Mr. White handled the actual exchange of the money, and he recalled that they received five to seven methadone pills.

Later, the Defendant took some of the methadone pills. She and Mr. White smoked some marijuana. Some time thereafter, Ms. Higgs showed up at the Defendant's trailer. Mr. White believed she was looking for methadone as well. Ms. Higgs knocked on the Defendant's door; when the Defendant did not answer, Ms. Higgs either hit or kicked the door. The Defendant exited her trailer and told Ms. Higgs to leave. When Ms. Higgs refused, the Defendant slammed her up against the side of the trailer. Ms. Higgs left. Mr. White said Corporal Ola arrived a short time thereafter,

about sixty to ninety minutes after the Defendant had taken the methadone pills. Finally, Mr. White also affirmed that he had not been charged with any crime as a result of that day's events.

Ronald Greer also testified. He corroborated Mr. White's claim that the Defendant asked them to buy her methadone on the street; when Mr. Greer asked the Defendant why she could not call her doctor to get more, "she said, it didn't work like that. It wasn't that easy. She couldn't do that."

Mr. Greer took the Defendant's money and drove her car. He and Mr. White proceeded to Nashville and bought four methadone "wafers." When they returned, the Defendant "ate three [of the methadone wafers] right off the bat." The Defendant and Mr. White then smoked a marijuana cigarette. Mr. Greer said the marijuana belonged to the Defendant. On cross-examination, Mr. Greer noted that he had a child with Ms. Higgs. He believed that she had come to the Defendant's trailer to convince him to take the child for the day, not to obtain methadone from the Defendant. He told Ms. Higgs he could not leave because the Defendant was paying him ten dollars an hour to do some work on her trailer.

After being qualified as an expert in drug identification, TBI Special Agent John Scott testified that the plant material he received from the Defendant's trailer was marijuana, a Schedule VI controlled substance. He also testified that he received one pill of methadone, a Schedule II controlled substance, two pills of benzphetamine, a Schedule III controlled substance, and one pill of Valium, a Schedule IV controlled substance. On cross-examination, he noted that all of the controlled substance pills he examined could be obtained legally with a prescription.

The Defendant chose to testify in her own defense. She said that she had been prescribed methadone for chronic pain and had taken it for seventeen years. She had undergone four surgeries on her right arm, a hysterectomy, and "[h]ad just numerous breaks and things from car wrecks and things like that." She also had hip surgery and had been declared disabled by the Social Security Administration.

She said Mr. Greer was at her trailer on September 14, 2005, doing some painting and drywall work. Mr. White came by to see the Defendant's son, who was not present at the time. When Corporal Ola approached the trailer, the Defendant went out to talk to him. She noticed that Ms. Higgs and her grandmother were there as well. As the Defendant spoke to Corporal Ola, Mr. Greer, who had been inside the trailer with Mr. White, opened the trailer door and showed Corporal Ola the remainder of a marijuana cigarette. The Defendant said no one had been smoking marijuana in the trailer.

The Defendant testified that she was not prescribed Valium, had no Valium in her possession on September 14, and was surprised that Corporal Ola said he found Valium in her trailer. The Defendant said she had been prescribed the methadone pill Corporal Ola found. She did not use illegal drugs and did not allow illegal drugs in her home. The Defendant also introduced documentation of her prescriptions. She said Mr. White and Mr. Greer were lying about buying

methadone for her in Nashville, and that she would never have allowed Mr. Greer to drive her vehicle without accompanying him.

On cross-examination, the Defendant noted that prescription documentation indicated she had received ninety methadone pills on September 2, 2005. She was to take three pills a day; she opined that she would have had no need to buy methadone only twelve days after refilling a thirty day prescription. She could not explain, however, why Corporal Ola found only one methadone pill in her trailer, rather than the numerous pills that should have remained from the September 2 refill.

Raymond Osborne, the Defendant's son, testified that he lived with her in September 2005. His mother did not use marijuana and did not allow it in her trailer. She also never sold any of her medications to anyone.

The State recalled Corporal Ola as a rebuttal witness. He again testified that he did not allow Mr. White and Mr. Greer to remain in the Defendant's trailer while he questioned the Defendant; only he and the Defendant were inside the trailer when the Defendant showed him the box of pills and marijuana on her dresser. He also clarified that he did a thorough search of the trailer and recovered only one methadone pill. Finally, he noted that he had seen Mr. Greer drive the Defendant's car by himself.

The Defendant was convicted of three counts of simple possession of a controlled substance and one count of possession of drug paraphernalia. She now appeals.

Analysis

The Defendant challenges the sufficiency of the evidence convicting her of simple possession of methadone and marijuana. She apparently does not challenge her convictions for possession of Valium or drug paraphernalia. Tennessee Rule of Appellate Procedure 13(e) prescribes that "[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. See State

v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

“It is an offense for a person to knowingly possess or casually exchange a controlled substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice.” Tenn. Code Ann. § 39-17-418(a). A showing of constructive possession is sufficient to satisfy this statute. See State v. Brown, 823 S.W.2d 576, 579 (Tenn. Crim. App. 1991).

The term “possession,” as used in the [controlled substances] statute, embraces both actual and constructive possession. Before a person can be found to constructively possess a drug, it must appear that the person has “the power and intention at a given time to exercise dominion and control over . . . [the drugs] either directly or through others.” In other words, “constructive possession is the ability to reduce an object to actual possession.”

State v. Ross, 49 S.W.3d 833, 845-46 (Tenn. 2001) (citing State v. Transou, 928 S.W.2d 949, 955-56 (Tenn. Crim. App. 1996)). “[A] defendant’s mere presence at a place where controlled substances are found will not support an inference of possession.” Id. at 846 (citing Transou, 928 S.W.2d at 955-56). “A person in possession of the premises where controlled substances are found,” however, “may also be presumed to possess the controlled substances themselves.” Id. (citing Armstrong v. State, 548 S.W.2d 334 (Tenn. Crim. App. 1976)).

Corporal Ola testified that the Defendant led him to a box on top of her dresser, in her bedroom, in her trailer. Agent Scott testified that this box contained a small amount of marijuana and a methadone pill. This evidence establishes that the Defendant possessed both the marijuana and the methadone pill. Because it is impossible to obtain a valid prescription for marijuana in Tennessee, this evidence is sufficient to establish the Defendant’s guilt of simple possession of marijuana, a Schedule VI controlled substance. See Tenn. Code Ann. § 39-17-415(a)(1). Mr. White and Mr. Greer also testified that the Defendant had smoked marijuana that day.

We conclude the evidence was also sufficient to establish that the Defendant was not validly prescribed the methadone pill Corporal Ola found. Both Mr. White and Mr. Greer testified that they illegally purchased that methadone pill for the Defendant. The jury obviously accredited this testimony and did not find credible the Defendant’s claim that the pill came from her September 2 prescription refill, especially given her inability to account for the whereabouts of the remainder of the pills in that refill. This evidence is sufficient to establish the Defendant’s guilt of simple possession of methadone, a Schedule II controlled substance. See Tenn. Code Ann. § 39-17-408(c)(14). This issue is without merit.

Conclusion

Based on the foregoing authorities and reasoning, we affirm the judgments of the trial court.

DAVID H. WELLES, JUDGE